IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

FRIDAY, THE 17TH NOVEMBER 2006 / 26TH KARTHIKA 1928

WP(C).No. 29839 of 2006(B)

PETITIONER:

SABEENA PAUL, AGED 46 YEARS,
SECRETARY, KOTTAYAM MUNICIPALITY,
RESIDING AT MUNICIPAL QUARTERS, KOTTAYAM.

BY ADV. SMT.SANDHYA RAJU

RESPONDENTS:

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1. MUNICIPALITY OF KOTTAYAM,
MUNICIPAL BUILDING, KOTTAYAM.
(REPRESENTED BY ITS CHAIR PERSON).

2. STATE OF KERALA, REPRESENTED BY
ITS PRINCIPAL SECRETARY,
MINISTRY OF LOCAL SELF GOVERNMENT.

3. VIJAYAKUMAR,
SECRETARY, VADAKARA MUNICIPALITY,
VADAKARA.

BY ADV. SRI.SIBY MATHEW
SRI.A.A.MOHAMMED NAZIR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J

W.P.(C)NO. 29839 of 2006

Dated this the 17th day of November, 2006

JUDGMENT

The petitioner while working as the Secretary of the first respondent Municipality got information that she has been transferred from that Municipality to Kollam District. She has rushed to this Court praying for the issuance of appropriate writ quashing the transfer order issued by the second respondent Government of Kerala and to grant a declaration as this Court deems fit and proper in the circumstances.

2. Subsequently the first respondent Municipality entered appearance and a detailed counter affidavit has been filed. The petitioner has filed a reply affidavit producing a copy of the transfer order marked as Ext.P3 dated 8.11.2006.

3. The main contention urged by the petitioner is non compliance of Section 48(6) of the Kerala Municipality Act which mandates that before passing a resolution by the council to transfer the Secretary from the concerned Municipality, the Secretary shall be given an opportunity to give a representation and if a request by him of being heard by the Council or the Chair Person is made, the same shall be granted. According to the petitioner, she was not given the

opportunity to file a representation. The counter affidavit sworn to by the Chair Person of the first respondent Municipality denies the above averment. In paragrpah-5 of the counter affidavit, it is stated that the resolution passed by the Municipal Council to recommend to the Government to transfer the petitioner from the first respondent Municipality was after issuing the mandatory notice under Section 48 (6) of the Municipality Act. The petitioner refused to receive notice when the same was offered to her by the deponent of the affidavit personally. Hence attempts were made to serve notice on the petitioner through the Peon of the Municipality. That attempt also failed, because, the petitioner refused to receive the notice. Ext.R1(a) is the notice referred to in the counter affidavit. Ext.R1(b) is the true photo copy of the despatch register where entries have been made about the envelop containing Ext.R1(a) notice addressed to the petitioner. Ext.R1(c) is the subsequent notice issued by the Chair Person on 26.10.2006 informing the petitioner that she had not responded to the notice dated 19.10.2006 and that if she wished to make any representation, the same shall be done on or before 30th October 2006. Ext.R1(d) is the extract of the despatch register containing the entries of the Municipality to show that Ext.R1(c) notice was despatched. Ext.R1(c) is the notice issued to the Councilor

containing the agenda relating to the transfer of the Municipal Secretary. Ext.R1(f) is the minutes of the meeting of the Municipal Council held on 30.10.2006. Ext.R1(c) shows that the peon of the Municipality Sri.P.T.Babu has made an endorsement to the effect that the addressee of the notice refused to acknowledge the receipt of that notice. In the reply affidavit, the petitioner reiterated that she was not served with any notice as contended in the counter affidavit.

4. The burden is on the petitioner to show that no notice, as averred in the counter affidavit, was served on the petitioner. As far as the first respondent is concerned, the burden cast on it stands discharged not only by the statements made before this Court on oath by the Chair Person of the Municipality but also by producing relevant official records and other documents in support of the contention. Except the bald denial made by the petitioner, there is nothing to show that mandate of the proviso to Section 48(6) of the Municipalities Act stood violated. Therefore the contention that there is noncompliance of the relevant statutory provision is liable to be rejected. It follows that no relief can be granted to the petitioner. The writ Petition is dismissed.

K.K.DENESAN, JUDGE

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